

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF
BARRIO VIETNAM SUPERFUND SITE

Ecolab Manufacturing Inc.,
Olay LLC,

Respondents,

Proceeding under Sections 106(a) and 122 of the
Comprehensive Environmental Response,
Compensation, and Liability Act of 1980, as
amended, 42 U.S.C. §§ 9606(a) and 9622.

Index Number
CERCLA-02-2012-2014

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (the "Settlement Agreement") is entered into voluntarily by Ecolab Manufacturing Inc. ("Ecolab"), Olay LLC ("Olay") ("collectively Respondents"), and the United States Environmental Protection Agency ("EPA") and requires Respondents to perform a removal action and pay certain response costs in connection with the Barrio Vietnam Superfund Site, located in Guaynabo, Puerto Rico.
2. The Settlement Agreement is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Sections 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Fed. Reg. 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region II to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated November 23, 2004.
3. EPA has notified the Puerto Rico Environmental Quality Board ("EQB") of this Settlement Agreement pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
4. Respondents' participation in this Settlement Agreement shall neither constitute nor be construed as an admission of liability or an admission of the Findings of Fact or Conclusions of Law or Determinations contained in this Settlement Agreement. To effectuate the mutual objectives of EPA and Respondents, Respondents agree to comply with and be bound by the

terms of this Settlement Agreement. Respondents agree not to contest the authority or jurisdiction of the Director of the Emergency and Remedial Response Division or his designee to issue this Settlement Agreement, and further agree that they will not contest the validity of this Settlement Agreement or its terms in any proceeding to enforce the terms of this Settlement Agreement.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and Respondents and their successors and assigns. Any change in the ownership or corporate status of any Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondents under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of either Respondent to implement the requirements of this Settlement Agreement, the remaining Respondent shall complete all such requirements.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement Agreement or in an attachment to this Settlement Agreement, the following definitions shall apply:

- a. "Day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.
- b. "Effective Date" means the date specified in Paragraph 117.
- c. "Party" or "Parties" means EPA and/or Respondents.
- d. "Response Costs" means (1) \$600,000 of costs paid for response actions performed by EPA in connection with the Site prior to the Effective Date of this Settlement Agreement; (2) all direct and indirect costs incurred by EPA in overseeing Respondent's implementation of the Work (defined below) until the date of EPA's written notification pursuant to Paragraph 114 of this Settlement Agreement that the Work has been completed; (3) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondent in accordance with Paragraph 69, below; and (4) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement.
- e. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2012-2014, and all appendices attached hereto. In the event of conflict between the Administrative Settlement Agreement and Order on

Consent and any appendix, the Administrative Settlement Agreement and Order on Consent shall control.

f. "Site" shall mean the Barrio Vietnam Superfund Site, which includes a residential property approximately 1.5 acres in size, located at 68 Calle A, Guaynabo, Puerto Rico, approximately five miles south of San Juan proper and one quarter mile west of San Juan Bay.

g. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

h. "Work" means all work and other activities that Respondents are required to perform pursuant to this Settlement Agreement.

IV. EPA's FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Site is located at 68 Calle A, Guaynabo, Puerto Rico, approximately five miles south of San Juan and one quarter mile west of San Juan Bay. The Site includes two dilapidated sheet metal warehouse-type buildings located in the rear of an approximately 1.5-acre residential property. A small church is located adjacent to the Site and shares the parking lot. The surrounding properties are a mixture of vacant lots, occupied residences and unoccupied residences. Due to numerous demolition and scavenging activities in the San Juan Bay area, incidents of trespassing and vagrancy have reportedly increased in the immediate vicinity of the Site.

9. EPA conducted a Site visit on September 28, 2011, observing approximately 1,000 containers including 55-gallon drums and 1-cubic yard containers, many labeled and leaking, and stored in the dilapidated, partially collapsed warehouse-type structures.

10. According to information gathered from nearby residents, the Site is an abandoned chemical storage facility, which was operated by Jorge L. Garcia Perez, now deceased, and Julio Perez, at which surplus/rejected chemicals were stored while the operators arranged for buyers. The whereabouts of Julio Perez is unknown at this time. Jorge L. Garcia Perez is survived by his wife, Ivette Herrera Villalongo, who lives in a house at the Site.

11. Ownership of the Site passed from the Guaynabo Municipality Department Acquisitions to Mr. Concepcion Garcia Pacheco and Ms. Paulita Perez on February 10, 1984. Mr. Garcia Pacheco and Ms. Perez are now deceased. Ownership of the property passed through Ms. Perez' will in 2011 to the four sons of Ms. Perez and Mr. Garcia Pacheco. However the will has been in litigation among the three living sons and other relatives. Mr. Jorge Garcia Perez, the deceased operator of the Site, was one of the four sons of Mr. Garcia Pacheco and Ms. Perez.

12. During the course of operation of the chemical storage facility, drums and other containers of waste materials containing hazardous substances came to be located at the rear of the property within the two warehouse-type structures. Based on labels on some of the containers as well as the deteriorated condition of many of the containers, most of these materials appear to have been at the Site for at least 15 years.

13. Respondent, Olay, a limited liability company organized in Puerto Rico and a subsidiary of Procter & Gamble International Operations S.A., which is a subsidiary of The Procter & Gamble Company ("P&G"), operates a cosmetics manufacturing facility located at Carretera #735 Km 2.3, Bo. Rio. Liano, Cayey, Puerto Rico.

14. Respondent, Ecolab, a Delaware corporation authorized to operate in Puerto Rico, operates a distribution facility in Bayamón, Puerto Rico for the distribution of cleaning materials such as soaps and detergents.

15. Site characterization sampling was performed by the EPA Removal Support Team on February 22, 2012 and March 1, 2012 to determine if the materials possessed the characteristics of hazardous wastes under RCRA.

16. Waste cosmetic and commercial cleaning materials came to be located at the Site. Numerous drums with labels containing the names Olay and/or P&G were identified at the Site. One such drum with both P&G and Olay labels was sampled and found to contain material possessing the characteristic of ignitability under RCRA, as described in 40 C.F.R. § 261.21. In addition, a second drum with an Olay/P&G label was sampled and found to have elevated concentrations of phenol.

17. Waste commercial cleaning materials bearing Ecolab's brand name came to be located at the Site. Numerous drums and containers located at the Site were identified as Ecolab material based on labels. Two such drums were sampled and found to contain material possessing the characteristic of corrosivity under RCRA, as described in 40 C.F.R. § 261.22.

18. Laboratory analysis was also conducted on some of the materials. The following CERCLA hazardous substances listed at 40 C.F.R. § 302.4 have been identified, among others, based on the analysis and/or label information at the Site: xylene, phenol, 2-4-dimethylphenol, ethyl acetate, maleic anhydride, acetophenone, potassium hydroxide, sodium hydroxide, sodium nitrite, ammonium hydroxide, phosphoric acid, sulfuric acid, dodecylbenzenesulfonic acid, formic acid and adipic acid.

19. Hazardous substances detected at the Site can cause a variety of adverse health effects. For example, corrosives materials can attack and chemically destroy exposed body tissues and begin to cause damage as soon as they touch the skin, eyes, respiratory tract, and digestive tract. Short-term exposure to phenol in the air can cause respiratory irritation, headaches and burning of the eyes. Exposure to high amounts of phenol on the skin can produce skin burns, liver

damage, dark urine, irregular heart beat and even death. Ingestion of concentrated phenol can produce internal burns or death.

20. EPA stabilized the Site by placing the drums, containers and debris that were in the poorest condition into overpacks. Soils at the Site may have been impacted with contaminated materials released from the drums while stored in the warehouse-type structures prior to stabilization.

21. The materials identified above are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

22. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

23. Respondents are "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21). Respondents Olay and Ecolab arranged for the disposal of hazardous substances which came to be located at the Site. Respondents are thus responsible parties within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3).

24. The presence of hazardous substances in deteriorating drums and other containers and the potential for associated contaminated soils at the Site, constitute a "release" or threat of "release" of a hazardous substances into the environment, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

25. Respondents have been given the opportunity to discuss with EPA the basis for issuance of this Settlement Agreement and its terms.

V. DETERMINATIONS

26. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;
- b. Hazardous substances or pollutants or contaminants in drums, barrels, or other storage containers that may pose a threat of release;
- c. Weather conditions that may cause hazardous substances, or pollutants, or contaminants to migrate or be released.
- d. Threat of fire or explosion; and

- e. the unavailability of other appropriate federal or state response mechanisms to respond to the release.

27. EPA has determined that a removal action at the Site is necessary to address the release or threat of release of hazardous substances or pollutants or contaminants from the drums, other containers at the Site.

28. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be considered to be consistent with the NCP.

29. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this removal action, EPA has determined that the actual or threatened release of hazardous substances at and from the Site may present an imminent and substantial endangerment to the public health, welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondents shall undertake a removal action at the Site, as set forth in Section VI (Work To Be Performed), below. All activities specified below shall be initiated and completed as soon as possible even though maximum time periods for their completion are specified herein.

VI. WORK TO BE PERFORMED

A. Designation Of Contractor and Project Coordinator

30. Within two (2) days after the effective date of this Settlement Agreement, Respondents shall select a coordinator, to be known as the Project Coordinator, and shall submit the name, address, qualifications, and telephone number of the Project Coordinator to EPA. The Project Coordinator shall be responsible on behalf of Respondents for oversight of the implementation of this Settlement Agreement. The Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Settlement Agreement. Respondents shall ensure that all Work requiring certification by a professional engineer licensed in the State shall be reviewed and certified by such. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

31. Selection of the Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within seven (7) days following EPA's disapproval. Respondents may change their Project Coordinator provided that EPA has received written notice at least seven (7) days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

32. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator on behalf of Respondents. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondents at all times until EPA issues a notice of completion of the Work in accordance with Paragraph 114. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Settlement Agreement and shall be deemed effective upon receipt.

33. All activities required of Respondents under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by Federal, State, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

34. Respondents shall retain at least one contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of a proposed contractor within ten (10) days of the effective date of this Settlement Agreement. Respondents shall also notify EPA of the name and qualifications of any other contractor or subcontractor proposed to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work.

35. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors proposed by Respondents to conduct the Work. If EPA disapproves in writing of any of Respondents' proposed contractors to conduct the Work, Respondents shall propose a different contractor within seven (7) days of receipt of EPA's disapproval.

36. Respondents shall provide a copy of this Settlement Agreement to each contractor and subcontractor approved and retained to perform the Work required by this Settlement Agreement. Respondents shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including their agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondents shall be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

B. Description of Work

37. Within three (3) Working Days of the Effective Date of this Settlement Agreement, Respondent shall institute security measures at the Site. Respondent shall maintain 24-hour security at the Site while the overpacks, drums and other containers remain on the Site, which shall consist of a security guard and adequately locked and secure containment.

38. Respondents shall perform, at a minimum, all actions necessary to address the hazardous substances present at the Site by implementing the actions set forth in this paragraph. The actions to be implemented include, but may not be limited to, the following:

- a. stabilize and secure all containers showing signs of deterioration or posing a threat of spill or release;
- b. characterize, remove, and properly dispose of all drums, containers and contents;
- c. characterize, remove and properly dispose of material that has spilled or leaked from the containers and associated contaminated soil;
- d. conduct appropriate post-excavation sampling and analysis of excavated areas;
- e. restore the Site as appropriate, backfill excavated areas and re-vegetate affected areas; and
- f. such other investigations, studies, and other response actions as Respondents may propose and EPA may approve in accordance with this Settlement Agreement.

39. Within thirty (30) days of the Effective Date of this Settlement Agreement, Respondents shall submit to EPA for review and approval a detailed Site Operating Plan ("SOP") for the Work in accordance with this Settlement Agreement, CERCLA, the NCP, relevant EPA guidance documents and other applicable Federal and State laws and regulations. The SOP shall include the following:

- a. Site Work Plan;
- b. Transportation and Disposal Plan
- c. Health and Safety Plan; and
- d. Quality Assurance Project Plan ("QAPP"), which shall include a plan for sampling and analysis.

40. The Site Work Plan shall discuss the proper characterization, staging, handling, sampling and analysis of all materials at the Site to be addressed by the actions set forth in Paragraph 38 of this Settlement Agreement, and at a minimum, address the following:

- a. Mobilization, including set-up of office, laboratory, and decontamination trailers as necessary to properly support field activities and establishment of work zones including, but not limited to a support zone, contamination reduction zone, and exclusion zone. Conceptual drawings must be prepared to depict all work and safety zones including staging and sampling areas, waste segregation areas, command posts and decontamination areas.

- b. Proposed Time Line for the completion of all activities at the Site and all other requirements of this Settlement Agreement. The schedule shall provide for completion of all field work no later than four (4) months from the date of EPA approval of the SOP.
- c. Procedures for inspection and inventorying of all drums and containers including the use of EPA's existing container database or the maintenance of its own database to include a unique identification number, manufacturers' names, and label markings as appropriate for all containerized waste.
- d. Procedures for excavating, handling and staging drums, containers, wastes, and contaminated soil to prevent the release of hazardous substances to the environment including runoff control, proper water management and containment, emissions management and erosion control.
- f. A plan for appropriate demobilization from the Site, interim and final restoration of the Site.
- g. A plan for providing access control to any staging areas, including, but not limited to, measures to be taken to keep unauthorized personnel from entering restricted work areas and the Site for the duration of the Work.

41. The Transportation and Disposal Plan shall outline procedures for the proper transportation and disposal of materials as required for implementation of the Work as set forth in Paragraph 38 of this Settlement Agreement. The Plan will include the identification of the proposed disposal facilities for all waste streams and include waste profile information, facility acceptance documentation, and analytical characterization of each waste stream. In addition the Plan will include the following information to be determined and documented by the Respondents:

- a. the valid RCRA transporter and disposal identification numbers for each proposed transporter and disposal company;
- b. the most recent six-month State, Commonwealth of Puerto Rico ("Commonwealth"), or EPA regulatory inspection results of each disposal company;
- c. documentation of the current permit status of proposed transporters and disposal facilities; and
- d. the date of the most recent State, Commonwealth, or EPA regulatory inspection of each proposed disposal company, and any special provisions or conditions attached to the RCRA disposal permits as a result of the most recent inspection.

Respondents shall provide all of the information required in a. – d. above to the EPA On-Scene Coordinator (“OSC”) for approval prior to shipping any waste off the Site.

After permitted disposal facilities have been identified, all wastes shall be properly manifested and shipped off-Site via permitted transporters. All final signed manifests, bills of lading and certificates of destruction or disposal will be provided to the OSC upon receipt by Respondents.

42. The Health and Safety Plan shall ensure the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with the “EPA Standard Operating Safety Guide” (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (“OSHA”) regulations found at 29 C.F.R. Part 1910. The plan shall also include contingency planning. Respondents shall incorporate all changes to the plan required by EPA and shall implement the plan during the duration of the removal action. The Health and Safety Plan, at a minimum, shall address the following:

- a. Delineation of the work zones;
- b. Personnel monitoring requirements, paying particular attention to monitoring specific job functions in compliance with OSHA requirements;
- c. Personal protective equipment requirements and upgrade thresholds based on real-time air monitoring;
- d. Demonstration that all personnel, including subcontractor personnel, have current certifications as per applicable OSHA regulations;
- e. Decontamination procedures for personnel and equipment exiting any hot zone; and
- f. Compliance with OSHA requirements for Health and Safety Plans.

If any of the Work performed by Respondents pursuant to this Settlement Agreement requires alteration of the Health and Safety Plan, Respondents shall submit to EPA for review and approval proposed amendments to the Health and Safety Plan.

43. The QAPP shall contain the following:

- a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA policy and guidance regarding sampling, quality assurance, quality control, data validation, and chain of custody procedures. Respondents shall incorporate these procedures in accordance with the Uniform Federal Policy for Implementing Quality Systems (“UFP-QS”), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans (“UFP-

QAPP”), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005 or newer; and other guidance documents referenced in the aforementioned guidance documents. Subsequent amendments to the above, upon notification by EPA to Respondents of such amendments, shall apply only to procedures conducted after such notification.

- b. If any of the Work performed by Respondents pursuant to this Settlement Agreement requires alteration of the QAPP, Respondents shall submit to EPA for review and approval proposed amendments to the QAPP.
- c. Respondents shall conduct the appropriate level of data verification/validation and provide the specified data deliverables as provided in the EPA-approved QAPP.
- d. The QAPP shall require that any laboratory utilized by Respondents is certified for the matrix/analyses which are to be conducted for any work performed pursuant to this Order, by one of the following accreditation/certification programs: USEPA Contract Laboratory Program (“CLP”), National Environmental Laboratory Accreditation Program (“NELAP”), American Association for Laboratory Accreditation (“A2LA”), or a certification issued by a program conducted by a state, and acceptable to EPA, for the analytic services to be provided. The QAPP shall require the Respondents to submit laboratory certificates from such accreditation programs that are valid at the time samples are analyzed. If a specific analytical service is unavailable from a certified laboratory, EPA may within its discretion, approve Respondents’ utilization of a laboratory that is not certified. EPA approval shall be based on Respondents’ submittal of a written request, submittal of the laboratory quality assurance plan, and the laboratory’s demonstration of capability through the analysis of Performance Evaluation samples for the constituents of concern.
- e. In their contract(s) with laboratories utilized for the analyses of samples, Respondents shall require granting access to USEPA personnel and authorized representatives of the USEPA to the laboratories for the purpose of ensuring the accuracy of laboratory results related to the Site.
- f. For any analytical work performed under this Settlement Agreement, including but not limited to that performed in a fixed laboratory, in a mobile laboratory, or in on-Site screening analyses, Respondents shall submit to EPA, within thirty (30) days after acceptance of the analytical results, a “Non-CLP Superfund Analytical Services Tracking System” form with respect to each laboratory utilized during a sampling event. Each such form shall be submitted to the EPA OSC, and a copy of the form and transmittal letter shall also be sent to:

Regional Sample Control Center Coordinator (RSCC)
USEPA, Division of Environmental Science & Assessment

MS-215
2890 Woodbridge Avenue
Edison, New Jersey 08837.

44. The QAPP shall include detailed procedures, methods and sampling parameters to be implemented to sample and analyze the contaminants found in Site soils and containers that are required for off-Site transport and disposal, and to insure proper staging of containerized materials into compatible waste groups for disposal. The QAPP will also include detailed procedures, methods, and sampling parameters to be utilized for post-excavation sampling of soil in the areas of excavation. Appropriate sampling and analysis methods (e.g., sample frequency, compositing techniques, etc.), as necessary shall be utilized for the proper disposal of contaminated soil and containers.

45. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing Work under this Settlement Agreement. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity.

46. EPA either will approve the SOP, or will require modifications thereto pursuant to Section VII (Plans and Reports Requiring EPA Approval), below. Upon its approval by EPA, the SOP shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

47. Within five (5) days after EPA's approval of the SOP, Respondents shall commence implementation of the EPA-approved SOP. Respondents shall fully implement the EPA-approved SOP in accordance with the terms and schedule therein and in accordance with this Settlement Agreement. All Work requirements of this Settlement Agreement shall be completed within seven (7) months of the date of EPA approval of the SOP submitted pursuant to this Settlement Agreement.

48. Respondents shall notify EPA of the names and addresses of all off-Site Waste treatment, storage, or disposal facilities selected by Respondents to receive Wastes from the Site. Respondents shall provide such notification to EPA for approval at least five (5) days prior to off-Site shipment of such Wastes.

49. At the time of completion of all field activities required by this Settlement Agreement, demobilization shall include sampling if sampling tied to the demobilization is deemed necessary by EPA, and proper disposal or decontamination of protective clothing, remaining laboratory samples taken pursuant to this Settlement Agreement, and any equipment or structures constructed to facilitate the removal action. Respondents shall insure that the Site is restored in accordance with Paragraphs 38(e) and 40(f).

50. Respondents shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, the following guidance

documents: *EPA Region 2's "Clean and Green Policy"* which may be found at http://www.epa.gov/region02/superfund/green_remediation/policy.html, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. On-Scene Coordinator, Other Personnel, and
Modifications to EPA-Approved SOP

51. All Work required of Respondents under the terms of this Settlement Agreement shall be performed only by qualified persons possessing all necessary permits, licenses, and other authorizations required by the Federal government and the Commonwealth, and all work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

52. The current EPA OSC for the Site is: Angel Rodriguez, Caribbean Environmental Protection Division, U.S. Environmental Protection Agency, Region 2, City View Plaza, Tower 2, Suite 7000, 48 State Rd. 165, km 1.2, Guaynabo, Puerto Rico 00968-8069, office telephone number 797-977-5830. EPA will notify Respondents' Project Coordinator if EPA designates a different OSC for the Site.

53. EPA, including the OSC, or his authorized representative, will conduct oversight of the implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondents at the Site consistent with this Settlement Agreement. Absence of the OSC from the Site shall not be cause for stoppage of Work unless specifically directed by the OSC.

54. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Settlement Agreement, Respondents or their consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date of this Settlement Agreement, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved SOP. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Settlement Agreement and shall be implemented by Respondents.

VII. PLANS AND REPORTS REQUIRING EPA APPROVAL

55. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any

notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

56. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

57. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all activities performed pursuant to this Settlement Agreement. EPA may modify those documents and/or perform or require the performance of additional work unilaterally to accomplish the objectives set forth in this Settlement Agreement.

58. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

VIII. REPORTING AND NOTICE TO EPA

59. Commencing on the tenth day of the month after the Effective Date of this Settlement Agreement, unless there is field work at the Site, Respondents shall provide monthly progress reports. Whenever, during the implementation of this Settlement Agreement, Respondents are engaged in active field work, Respondents shall provide EPA with daily oral progress reports, as well as written progress reports every seven (7) days during active field work. The first written progress report during active field work shall be submitted within seven (7) days of the commencement of field work. After active field work has been completed, Respondents shall resume monthly written progress reports, commencing 30 days after the submission of the last weekly written progress report. All progress reports shall fully describe all actions and activities undertaken pursuant to this Settlement Agreement. Such progress reports shall, among other things: (a) describe the actions taken toward achieving compliance with this Settlement Agreement during the previous week; (b) include all results of sampling and tests and all other data received by Respondents after the most recent progress report submitted to EPA; (c) describe all actions which are scheduled for the next week; (d) provide other information relating to the progress of Work as is customary in the industry; and (e) include information regarding percentage of completion, all delays encountered or anticipated that may affect the future schedule for completion of the Work required hereunder, and a description of all efforts made to mitigate those delays or anticipated delays.

60. Respondents shall provide EPA with at least one (1) week advance notice of any change in the schedule.

61. The Final Report referred to in Paragraph 63, below, and other documents submitted by Respondents to EPA which purport to document Respondents' compliance with the terms of this Settlement Agreement shall be signed by a responsible official of Respondents or by the Project Coordinator designated pursuant to Paragraph 30. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

62. The SOP, the Final Report, and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following addressees:

3 copies to:

U.S. Environmental Protection Agency Region II
City View Plaza, Tower 2, Suite 7000
48 State Rd. 165, km 1.2
Guaynabo, Puerto Rico 00968-8069
Attention: Angel Rodriguez, Barrio Vietnam Superfund Site, On-Scene Coordinator

1 copy to:

United States Environmental Protection Agency Region II
Office of Regional Counsel
New York/Caribbean Superfund Branch
290 Broadway, 17th Floor
New York, New York 10007-1866
Attention: Argie Cirillo, Esq., Barrio Vietnam Superfund Site

2 copies to:

Pedro Nieves, Chairman
Puerto Rico Environmental Quality Board
P.O. Box 11488
Santurce, PR 00910

63. Within sixty (60) days after completion of the work required by the SOP, Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications to the SOP which

occurred during Respondents' performance of the Work required under this Settlement Agreement;

- c. A listing of quantities and types of materials removed from the Site or handled on-Site;
- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including QAPP data and chain of custody records;
- g. Accompanying appendices containing all relevant documentation generated during the Work (e.g. manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits;
- h. An accounting of expenses incurred by Respondents in performing the Work; and
- i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

64. EPA either will approve the Final Report or will require modifications thereto pursuant Paragraphs 55-58, above to.

IX. OVERSIGHT

65. During the implementation of the requirements of this Settlement Agreement, Respondents and their contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being carried out or to be carried out by Respondents, including inspections at the Site and at laboratories where analytical work is being done hereunder.

66. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Settlement Agreement.

X. COMMUNITY RELATIONS

67. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondents shall participate in the

preparation of all appropriate information disseminated to the public; participate in public meetings which may be held or sponsored by EPA to explain activities concerning the Work; and provide a suitable location for public meetings, as needed.

XI. ACCESS TO PROPERTY AND INFORMATION

68. EPA, EQB, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondents shall at all times permit EPA, EQB, and their designated representatives full access to and freedom of movement at the Site and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be reasonably related to EPA oversight of the implementation of this Settlement Agreement.

69. In the event that action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use their best efforts to obtain access agreements from the present owners and/or occupants within twenty (20) days of the effective date of this Settlement Agreement for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as EQB and its designated representatives or agents. Such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time period specified herein, Respondents shall immediately notify EPA of their failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into their reports and deliverables.

70. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondents from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to

EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on Respondents' behalf, in connection with the implementation of this Settlement Agreement.

71. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY OF INFORMATION

72. Respondents shall preserve all documents and information relating to Work performed under this Settlement Agreement, or relating to Waste materials found on or released from the Site, for six (6) years after completion of the Work required by this Settlement Agreement. At the end of the six (6) year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

73. Respondents may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondents assert such a privilege in lieu of providing documents, they shall provide EPA with the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the contents of the document, record, or information; and f) the privilege asserted by Respondents. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

74. All documents submitted by Respondents to EPA in the course of implementing this Settlement Agreement shall be available to the public unless identified as confidential by Respondents pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to EQB, and EQB may make those documents available to the public unless Respondents conform with applicable Puerto Rico law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

XIII. OFF-SITE SHIPMENTS

75. All hazardous substances and pollutants or contaminants removed from the Site pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401-7671q, (d) RCRA, (e) the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2601-2692, and (f) all other applicable Federal and State requirements.

76. If hazardous substances from the Site are to be shipped outside of Puerto Rico, Respondents shall provide prior notification of such Waste shipments in accordance with the EPA Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) working days prior to such Waste shipments, Respondents shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

XIV. COMPLIANCE WITH OTHER LAWS

77. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable Federal and State laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under Federal environmental or State environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

78. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a Federal or Commonwealth permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any Federal or Commonwealth statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

79. Upon the occurrence of any event during performance of the Work required hereunder which, pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, requires reporting to the National Response Center, telephone number (800) 424-8802, Respondents shall immediately orally

notify the OSC of the incident or Site conditions, or in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA, Region 2, at (732) 321-6658 of the incident or Site conditions. Respondents shall also submit a written report to EPA within seven (7) days after the onset of such an event, setting forth the events that occurred and the measures taken or to be taken, if any, to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. The reporting requirements of this paragraph are in addition to, not in lieu of, reporting under CERCLA Section 103, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

80. In the event of any action or occurrence during Respondents' performance of the requirements of this Settlement Agreement which causes or threatens to cause a release of a hazardous substance or which may present an immediate threat to public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize the threat and shall immediately notify EPA as provided in the preceding paragraph. Respondents shall take such action in accordance with applicable provisions of this Settlement Agreement including, but not limited to, the Health and Safety Plan. In the event that EPA determines that: (a) the activities performed pursuant to this Settlement Agreement; (b) significant changes in conditions at the Site; or (c) emergency circumstances occurring at the Site pose a threat to human health or the environment, EPA may direct Respondents to stop further implementation of any actions pursuant to this Settlement Agreement or to take other and further actions reasonably necessary to abate the threat.

81. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XVI. REIMBURSEMENT OF COSTS

82. Respondents hereby agree to reimburse EPA for all Response Costs in connection with the Site. EPA will periodically send billings to Respondents for Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondents shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing.

83. To effect payment via EFT, Respondents shall instruct their bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- . Amount of payment
- . Bank: **Federal Reserve Bank of New York**
- . Account code for Federal Reserve Bank account receiving the payment: **68010727**
- . Federal Reserve Bank ABA Routing Number: **021030004**
- . SWIFT Address: **FRNYUS33**

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read:

D 68010727 Environmental Protection Agency

Name of remitter:

Settlement Agreement Index number: **CERCLA-02-2012-2014**

Site/spill identifier: A290

At the time of payment, Respondents shall send notice by email that such payment has been made to acctsreceivable.cinwd@epa.gov, rice.richard@epa.gov and by mail to:

U.S. Environmental Protection Agency

Cincinnati Finance Office

26 Martin Luther King Drive

Cincinnati, OH 45268

Angel Rodriguez, On-Scene Coordinator

U.S. Environmental Protection Agency, Region II

Caribbean Environmental Protection Division

City View Plaza, Tower 2, Suite 7000

48 State Rd. 165, km 1.2

Guaynabo, Puerto Rico 00968-8069

Argie Cirillo, Assistant Regional Counsel

U.S. Environmental Protection Agency, Region II

Office of Regional Counsel

290 Broadway, 17th Floor

New York, New York 10007-1866

Such notice shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondents' names and addresses.

The total amount to be paid by Respondents pursuant to this paragraph shall be deposited within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

84. Respondents shall pay interest on any amounts overdue under Paragraph 81 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XVII. FORCE MAJEURE

85. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondents and of any entity controlling, controlled by, or under common control with Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondents to perform such Work.

86. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA OSC or, in his absence, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division of EPA Region II at 732-321-6658 within forty-eight (48) hours of when Respondents knew or should have known that the event might cause a delay. In addition, Respondents shall notify EPA in writing within seven (7) calendar days after the date when Respondents first become aware or should have become aware of the circumstances which may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond their control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plan to take to minimize any delay; and (c) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondents of any of their obligations under this Settlement Agreement. Respondents' failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondents.

87. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Settlement Agreement which are not directly affected by the force majeure. Respondents shall use their best efforts to avoid or minimize any delay or prevention of performance of their obligations under this Settlement Agreement.

XVIII. STIPULATED AND STATUTORY PENALTIES

88. If Respondents fail, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 85 through 87 above (Force Majeure), Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 59, stipulated penalties shall accrue in the amount of \$1,000 per day, per violation, for the first seven days of noncompliance, \$1,500 per day, per violation, for the 8th through 15th day of noncompliance, \$3,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$7,000 per day, per violation, for the 26th day of noncompliance and beyond.
- b. For the progress reports required by Paragraph 59, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first seven days of noncompliance, \$750 per day, per violation, for the 8th through 15th day of noncompliance, \$1,500 per day, per violation, for the 16th through 25th day of noncompliance, and \$3,000 per day, per violation, for the 26th day of noncompliance and beyond.

89. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondents that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 83 above. Respondents shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

90. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties shall accrue and may be assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement Agreement.

91. Notwithstanding any other provision of this Settlement Agreement, failure of Respondents to comply with any provision of this Settlement Agreement may subject Respondents to civil penalties of up to thirty-seven thousand five hundred dollars (\$37,500) per violation per day, as provided in Sections 109 and 122(l) of CERCLA, 42 U.S.C. §§ 9609 and 9622(l), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 74 Fed. Reg. 626 (January 7, 2009)), unless such failure to comply is excused by EPA under the terms of Paragraphs 84 through 86 above. Respondents may also be subject to

punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

XIX. OTHER CLAIMS

92. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

93. Except as expressly provided in Paragraph 106 (waiver against "de micromis" parties) and Section XXIII (Covenant Not to Sue by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

94. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XX. INDEMNIFICATION

95. Respondents agree to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondents or under their control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondents.

96. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of the Work, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any

and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work, including but not limited to, claims on account of construction delays.

97. Further, Respondents agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondents, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement Agreement.

XXI. INSURANCE

98. At least seven (7) days prior to commencing any Work at the Site, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Settlement Agreement. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Settlement Agreement.

XXII. FINANCIAL ASSURANCE

99. Respondents shall demonstrate their ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the Effective Date of this Settlement Agreement one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) internal financial information to allow EPA to determine that Respondents have sufficient assets available to perform the Work. Respondents shall demonstrate financial assurance in an amount no less than the estimated cost of the Work to be performed by Respondents under this Settlement Agreement. If EPA determines that the financial assurances submitted by Respondents pursuant to this paragraph are inadequate, Respondents shall, within fifteen (15) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph.

XXIII. COVENANT NOT TO SUE BY EPA

100. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Response Costs. This covenant not to sue shall take effect upon the effective date of this Settlement Agreement and is conditioned upon the complete and satisfactory performance by Respondents of all of their obligations under this Settlement Agreement, including, but not limited to, payment of Response

Costs pursuant to Section XVI (Reimbursement of Costs), above. This covenant not to sue extends only to Respondents and does not extend to any other person.

XXIV. RESERVATION OF RIGHTS BY EPA

101. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

102. The covenant not to sue set forth in Section XXIII (Covenant Not to Sue by EPA), above, does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

- a. Claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;
- b. Liability for costs not included within the definition of Response Costs;
- c. Liability for performance of response action other than the Work;
- d. Criminal liability;
- e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. Liability arising from the past, present, or future disposal, release or threat of release of Waste outside of the Site; and
- g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

103. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by the United States in performing the Work pursuant to this paragraph shall be considered Response Costs that Respondents shall pay pursuant to Section XVI (Reimbursement of Costs). Notwithstanding any

other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXV. COVENANT NOT TO SUE BY RESPONDENTS

104. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of the Work, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work.

Except as provided in Paragraph 106 (Waiver of Claims), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 101 (b), (c), and (e)-(g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

105. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

106. Waiver of Claims. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

107. The waiver in Paragraph 106 shall not apply with respect to any defense, claim, or cause of action that Respondents may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondents. This waiver

also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. That such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. That the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXVI. CONTRIBUTION PROTECTION AND RIGHTS

108. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondents are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work and Response Costs.

109. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondents have resolved their liability to the United States for the Work performed under this Settlement Agreement and for Response Costs.

110. Except as provided in Section XXV (Covenant Not to Sue by Respondents), above, nothing in this Settlement Agreement precludes the United States or Respondents from asserting any claims, causes of action or demands against any persons not parties to this Settlement Agreement for indemnification, contribution or cost recovery. Nothing herein diminishes the right of the United States, pursuant to Sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that provide contribution protection to such persons.

XXVII. MODIFICATIONS

111. The OSC may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC’s oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

112. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 111.

113. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. TERMINATION AND SATISFACTION

114. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 63, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondents in writing. Such notification shall not affect any continuing obligations of Respondents. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

XXIX. SEVERABILITY/INTEGRATION/APPENDICES

115. If EPA files an action to enforce this Settlement agreement and a court issues an order that invalidates any provision of this Settlement Agreement, Respondents shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or excused by the court's order.

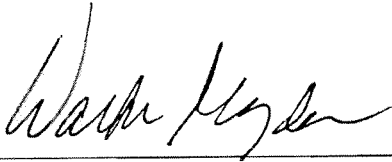
116. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A – Map of Site

XXX. EFFECTIVE DATE

117. This Settlement Agreement shall become effective five (5) days after execution of the Settlement Agreement by EPA. All times for performance of actions or activities required herein will be calculated from said effective date.

U.S. ENVIRONMENTAL PROTECTION AGENCY

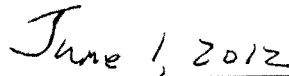


Walter Mugdan

Director

Emergency and Remedial Response Division

U.S. Environmental Protection Agency Region II



Date of Issuance

In the Matter of the Barrio Vietnam Superfund Site, EPA Index No. CERCLA-02-2012-2014

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

Ecolab Manufacturing Inc.

Greg Temple
(Signature) by PLT

1 June 2012
(Date)

Greg Temple
(Printed Name of Signatory)

EVP i Chief Supply Chain

(Title of Signatory)

In the Matter of the Barrio Vietnam Superfund Site, EPA Index No. CERCLA-02-2012-2014

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

Olay LLC

Beth A. Kushon
(Signature)

June 1, 2012
(Date)

Beth A. Kushon
(Printed Name of Signatory)

Manager, Product Supply
(Title of Signatory)